

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 207

Case No. : C. W. P.No. 1571 of 2013

Date of Decision : May 07, 2015

Madan Lal Petitioner

Vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Ms. Minakshi Goel, AAG, Punjab
for respondents no. 1 and 2.

* * *

DEEPAK SIBAL, J. :

Through the present writ petition, the petitioner seeks quashing of order dated 17.09.2012 (Annexure P-15), through which his representation to promote him as Accountant Grade-II w.e.f. 20.08.1993 – the date when his junior Dharam Pal – respondent no. 3 has been promoted, has been rejected. He further seeks a direction to the official respondents to

promote him as Accountant Grade-II w.e.f. 20.08.1993 i.e. from the date when respondent no. 3 – his junior has been promoted.

The petitioner, respondent no. 3 Dharam Pal and one Anil Kumar were working as Clerks in different Municipal Councils in the State of Punjab. It is the admitted position that after the passing of the prescribed departmental accounts examination with the requisite number of years of service, Clerks are eligible for promotion to the next higher post of Accountant Grade-II and that the inter-se seniority of the Clerks is determined from the date they pass the departmental accounts examination. It is further the admitted position that Anil Kumar passed the departmental examination in the year 1984, the petitioner passed the same in the year 1985, whereas respondent no. 3 passed the departmental examination in the year 1987. In view of the above admitted position, Anil Kumar and the petitioner were senior to respondent no. 3 – Dharam Pal, but respondent no. 3 was promoted to the post of Accountant Grade-II on 20.08.1993, whereas the above said – Anil Kumar was promoted as Accountant Grade-II in the year 1995 and the petitioner on 20.09.2000.

In view of the above, Anil Kumar approached this Court through **C. W. P. No. 11424 of 1993 – Anil Kumar vs. The State of Punjab and others**, which through order dated 18.01.2010, was allowed by passing the following order :-

“5. *The contention of the State*

that the 5th respondent had been taken on the cadre of Improvement Trust even in the year, 1983, is sought to be repelled by the petitioner by reference to the proceedings of the Director-cum-Joint Secretary, dated 28.02.1989 which states that the 5th respondent was being posted as an Accounts Clerk in the newly created post at the Improvement Trust by way of transfer from Municipal Committee, Ropar, with immediate effect. It means that the 5th respondent could not have been borne on the cadre of the Improvement Trust earlier to 28.02.1989. If it was so, the representation given by the petitioner on 18.11.1992 that he had acquired the qualification even earlier and that he was willing to be considered for promotion at the Improvement Trust obtains credibility. We have already seen that the Municipal Committee has filed written statement contending that the 5th respondent had

retained his lien to the Clerk's post only at the Municipal Committee and the order of transfer itself could not have been made except on deputation. If the 5th respondent had been promoted to the accountant's post on 20.08.1993, such promotion was being made, trouncing the seniority consideration which the petitioner had by the acquisition of his qualification even earlier to the 5th respondent. In such view of the matter, the petitioner would merit consideration to the promotion post from the date when the 5th respondent was promoted and placed above him.

6. *It is a matter of admission that the petitioner had been subsequently promoted to the Accounts post in the year, 1995. It also appears that the 5th respondent has since retired from service. There is no scope for quashing the order of promotion which was already issued to the 5th respondent and the petitioner however*

will have to be granted notional promotion to the higher post from 20.08.1993, the date when the 5th respondent was promoted and he will draw his monetary benefits and all the consequential benefits on such a reckoning to the scale that the promotion post afforded. The calculation of the benefits shall be made within a period of 12 weeks from the date of the receipt of copy of this order.

7. *The writ petition is allowed on the above terms. There shall be however no directions as to costs.”*

The above referred judgment was taken up in appeal through **L. P. A. No. 846 of 2010**, which was also dismissed on **22.07.2010**, through the following order :-

“The instant appeal under Clause X of the Letters Patent is directed against judgment dated 18.1.2010, passed by the learned Single Judge of this Court in CWP No. 11424 of 1993. It has been found that respondent No. 5-Shri Dharam Pal was

promoted as Accountant Grade-II, vide order dated 20.8.1993 although he was junior to the writ petitioner-Shri Anil Kumar. The basis for the aforesaid claim was that the writ petitioner had passed the Municipal Accounts Examination and other paper involving Punjab Town Improvement Act, 1922, which is necessary qualification for promotion as Accountant Grade-II in the municipal service. He had passed this examination earlier in the year 1984 whereas respondent No. 5-Shri Dharam Pal had passed the aforesaid examination subsequently. The seniority was required to be fixed in accordance with the date of passing of the examination. Respondent No. 5-Shri Dharam Pal stands already retired and the writ petitioner-Shri Anil Kumar was promoted as Accountant Grade-II in the year 1995. Accordingly, the learned Single Judge has directed the grant of notional promotion to the higher post from the date

when respondent No. 5-Shri Dharam Pal was promoted i.e. 20.8.1993. He has also been granted all consequential benefits on such a fixation of pay on the promotional post.

Having heard learned counsel, especially in view of the finding that the writ petitioner-Shri Anil Kumar was senior to respondent No. 5-Shri Dharam Pal, we are of the considered view that no interference of this Court would be warranted. Once the factual position has not been disputed, it is not possible to take a contrary view and hold that the writ petitioner-Shri Anil Kumar did not have any right to be considered for promotion. Anything to the contrary would result in violation of mandate of Articles 14 and 16 (1) of the Constitution. The appeal does not merit admission and is, thus, liable to be dismissed.

For the reasons aforementioned, this

appeal fails and the same is dismissed.”

Special Leave Petition being **S. L. P. No. 31779 of 2010** against the above reproduced order, passed by the Division Bench, was dismissed by the Apex Court on **24.11.2010**.

Thus, on the ground that the above said Anil Kumar had passed the departmental accounts examination prior to respondent no. 3 – Dharam Pal, he was held senior to him and accordingly, directions were issued to grant him seniority as Accountant Grade-II w.e.f. the date of promotion of respondent no. 3 – Dharam Pal i.e. 20.08.1993.

The case of the petitioner is identical. He has also passed departmental examination much prior to respondent no. 3 – Dharam Pal and that being so, though the petitioner was promoted as Accountant Grade-II on 29.09.2000, on the same analogy as in **Anil Kumar's** case (*supra*), he is entitled to the grant of seniority as Accountant Grade-II w.e.f. the date of promotion of respondent no. 3 – Dharam Pal i.e. 20.08.1993.

It deserves notice that when the petitioner had moved a representation to the respondents for the grievance as raised in the present petition, the matter was referred to the legal department of the respondents. After considering the entire issue, the Law Officer had given the following opinion :-

*“Sh. Madan Lal, Accountant has
passed the Accountant Examination in*

September 1985 i.e. prior to the passing of examination by Sh. Dharam Pal. The claim of Sh. Madan Lal Accountant is fully covered by the judgment dated 18.1.2010 passed by the Hon'ble High Court in CWP No. 11424 of 1993 in Anil Kumar's case. Sh. Madan Lal, Accountant being similarly situated employee is entitled for the grant of benefit of notional promotion to the post of Accountant Grade-2 w.e.f. 20.08.1993 the date when Sh. Dharam Pal was promoted. The case of Madan Lal falls within the orders issued by the Punjab Govt. vide N. 12/39/2002-5 PP-11/406 dated 17.7.2002 wherein it has been held where the judgment has attained finality then the same be implemented in its true spirit and grant same relief to other members of the cadres whose claim was based upon identical facts and points of law. Therefore, the representation/legal notice of Sh. Madan Lal may be disposed of in view of the order

*dated 18.1.2010 in C.W. P. No. 11424 of
1993 thereby granting the benefits of
notional promotion to Sh. Madan Lal w.e.f.
20.08.1993.*

Sd/-

Dated 16.08.2012

Law Officer”

In spite of the above, through the order impugned by the petitioner, his representation was rejected on the ground that the case of the petitioner could not be equated with Dharam Pal's case as he has been transferred to the Improvement Trust, Ropar. This stand, on the part of the respondents, could not have been taken, as the respondents had taken the same stand in Anil Kumar's case (*supra*), which was considered by this Court and rejected. As observed above, such rejection was upheld in an intra-court appeal by this Court, as also by the Apex Court. It may further be observed that even after transfer of respondent no. 3 – Dharam Pal to Improvement Trust, Ropar, he admittedly continued to retain his lien in the Municipal Council, Ropar. Thus, on that score, the claim of the petitioner could not have been rejected.

In view of the above, the impugned order dated 17.09.2012 (Annexure P-15) is quashed. It is further directed that the petitioner be granted deemed date of promotion as Accountant Grade-II w.e.f. 20.08.1993

i.e. the date when respondent no. 3 was promoted, with all consequential benefits.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

May 07, 2015
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